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11 BMW OF NORTH AMERICA, LLC and
12 BAYERISCHE MOTOREN WERKE AG

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

BMW OF NORTH AMERICA, LLC, a
Delaware limited liability company;
BAYERISCHE MOTOREN WERKE
AG, a German corporation,

Plaintiffs,

v.

MARIIA SYROTIUK, an individual
d/b/a BUY TUNING and a/d/b/a
CALIPER COVERS USA; IURII
GREBENIUK, an individual d/b/a BUY
TUNING and a/d/b/a CALIPER
COVERS USA; DOES 1-10, inclusive,

Defendants.

Case No.: 2:24-cv-10011
COMPLAINT FOR DAMAGES

- (1) FEDERAL TRADEMARK
INFRINGEMENT &
COUNTERFEITING [15 U.S.C. §
1114/*Lanham Act* § 32(a)]
- (2) FALSE DESIGNATION OF
ORIGIN/UNFAIR
COMPETITION [15 U.S.C. §
1125(a)/*Lanham Act* § 43(a)]
- (3) TRADEMARK DILUTION [15
U.S.C. § 1125(c)]
- (4) UNFAIR BUSINESS PRACTICES
[*CALIFORNIA BUSINESS &*
PROFESSIONS CODE § 17200]
[DEMAND FOR JURY TRIAL]

1 Plaintiffs BMW of North America, LLC (“BMW NA”) and Bayerische
2 Motoren Werke AG (“BMW AG”) (collectively “BMW” or “Plaintiffs”) hereby
3 file their Complaint for Damages (“Complaint”) against Defendants Mariia
4 Syrotiuk (“SYROTIUK”), Iurii Grebeniuk (“GREBENIUK”), and Does 1-10,
5 inclusive (collectively “Defendants”).

PARTIES

7 1. Plaintiff BMW NA is a Delaware limited liability company registered
8 to conduct business in the State of California with its principal place of business
9 located in Woodcliff Lake, New Jersey. BMW NA is an indirect subsidiary of
10 BMW AG. BMW NA is a sales and distribution company that is the importer and
11 exclusive authorized distributor of “BMW”, “BMW M” and “MINI” vehicles and
12 related products in the United States. Where affirmative conduct by a BMW entity
13 is alleged to have occurred in the United States, reference is to BMW NA.

14 2. Plaintiff BMW AG is a German corporation organized under the laws
15 of the Federal Republic of Germany with its principal place of business located in
16 Munich, Germany, and is the owner of the trademarks asserted in this action. BMW
17 AG designs and manufactures motor vehicles, emblems, wheels, grilles, and other
18 parts in Germany and other countries and for export and sale throughout the world.
19 The motor vehicles, parts and other goods are imported into, and marketed and
20 distributed in the United States by BMW NA.

21 3. Plaintiffs are informed and believe, and on that basis allege, that
22 Defendant SYROTIUK is an individual residing in Los Angeles, California.

23 4. Plaintiffs are informed and believe, and on that basis allege, that
24 Defendant GREBENIUK is an individual residing in Brooklyn, New York.

25 5. Plaintiffs are informed and believe, and on that basis allege, that
26 Defendants SYROTIUK, GREBENIUK, and Does 1-10, inclusive, own, operate
27 and do business as BUY TUNING in Los Angeles, California, Brooklyn, New
28 York, and online (www.buptyuning.com).

1 6. Plaintiffs are informed and believe, and on that basis allege, that
2 Defendants SYROTIUK, GREBENIUK, and Does 1-10, inclusive, own, operate
3 and do business as CALIPER COVERS USA in Los Angeles, California,
4 Brooklyn, New York, and online (www.calipercoversusa.com).

5 7. Plaintiffs are informed and believe, and on that basis allege, that
6 Defendants SYROTIUK, GREBENIUK, and Does 1-10, inclusive, and each of
7 them, were the agents, partners, joint venturers, servants, and employees of every
8 other defendant and the acts of each defendant, as alleged herein, were performed
9 within the course and scope of that agency, partnership, joint venture, service or
10 employment.

11 8. Plaintiffs are informed and believe, and on that basis allege, that
12 Defendants SYROTIUK, GREBENIUK, and Does 1-10, inclusive, sued herein by
13 fictitious names, are jointly, severally and concurrently liable and responsible with
14 one another upon the causes of action hereinafter set forth.

15 9. The true names and capacities, whether individual, corporate,
16 associate or otherwise, of defendants herein identified as Does 1-10, inclusive, are
17 unknown to Plaintiffs. Plaintiffs therefore sue said Doe defendants by such
18 fictitious names, and when the true names and capacities of said Doe defendants
19 are ascertained, Plaintiffs will seek to amend this pleading accordingly.

JURISDICTION / VENUE

10. This Court has subject matter jurisdiction over this action pursuant to
the Lanham Act, 15 U.S.C. § 1051, *et seq.*, 28 U.S.C. §§ 1331 and/or 1338(a), and
supplemental jurisdiction over Plaintiffs' state law claim pursuant to 28 U.S.C. §§
1337(a) and 1338(b).

25 11. This Court has general personal jurisdiction over Defendant
26 SYROTIUK inasmuch as SYROTIUK is an individual residing in and conducting
27 business from the State of California.

28 // /

1 12. This Court has specific personal jurisdiction over Defendant
 2 GREBENIUK inasmuch as he has willfully committed the tortious activities of
 3 trademark infringement and unfair competition alleged in this Complaint in the
 4 State of California. Defendant GREBENIUK has sufficient minimum contacts
 5 with California such that the exercise of jurisdiction over him by this Court does
 6 not offend traditional notions of fair play and substantial justice. Among other
 7 things, Defendant GREBENIUK holds out to consumers that BUY TUNING and
 8 CALIPER COVERS USA operate in and have warehouses in Los Angeles,
 9 California, and he has willfully offered for sale, and sold products and services to
 10 consumers in the State of California through Mercari.com, with payment
 11 processing facilitated by PayPal, using Plaintiffs' trademarks in advertising and
 12 distributed products bearing counterfeit marks to consumers in California.

13 13. In addition, Plaintiff BMW NA has significant contacts with the State
 14 of California. For example, Plaintiff BMW NA's Technology Office, Western
 15 Region Office, Group Representative Office, Engineering and Emission Test
 16 Center, and Training Center are all located in California. In addition, Plaintiff
 17 BMW NA operates a Vehicle Distribution Center (one of four) and Parts
 18 Distribution Centers (two of six) in California. BMW NA has also contracted with
 19 more than fifty (50) authorized dealerships of BMW vehicles throughout the State
 20 of California.

21 14. Venue is proper in this district, *inter alia*, pursuant to 28 U.S.C. §
 22 1391(b) because, Plaintiffs are informed and believe, and on that basis allege, that
 23 a substantial part of the events or omissions giving rise to these claims occurred
 24 within this District, and has caused damage to Plaintiffs in this District.

25 **GENERAL ALLEGATIONS**

26 **Plaintiffs and the Famous BMW Trademarks and Products**

27 15. Plaintiffs are in the business of designing, manufacturing, and
 28 distributing motor vehicles, motor vehicle parts and accessories, sold under various

1 trademarks, including but not limited to:

2 a. the “BMW” word mark and the BMW logo (collectively
3 “BMW Marks”); and

4 b. the M logo (the “BMW M Mark”).

5 16. Plaintiffs’ products and marks have achieved great success since their
6 introduction in commerce in the United States continuously since as early as 1955
7 for the BMW brand and since as early as 1987 for the BMW M brand.

8 17. BMW NA’s authorized dealerships of BMW and BMW M vehicles
9 provide numerous services, such as maintenance and repair services, financing,
10 leasing, insurance and warranty services. BMW NA also contracts with authorized
11 dealerships of BMW and BMW M vehicles to sell a wide variety of merchandise
12 bearing the BMW and BMW M Marks, including but not limited to apparel, mugs,
13 bags, toys, pens and watches to customers. BMW NA has nationally marketed and
14 distributed millions of vehicles manufactured in the United States to authorized
15 dealerships, who have marketed and sold those vehicles in the United States.

16 18. For decades, BMW NA has nationally marketed and authorized
17 dealerships of BMW and BMW M vehicles in the United States have locally
18 marketed both new and certified pre-owned BMW and BMW M vehicles, vehicle
19 parts, accessories, and merchandise, and services such as rental, financing, and
20 maintenance services. More than 340 authorized dealerships of BMW and BMW
21 M vehicles exist in the United States.

22 19. Plaintiffs’ commercial success under the BMW and BMW M Marks
23 in the United States and around the world has been tremendous. BMW NA has
24 distributed and sold to authorized dealerships of BMW and BMW M vehicles many
25 billions of dollars of products and services under the BMW and BMW M Marks in
26 the United States over the years. Plaintiffs’ motor vehicles and related motor
27 vehicle parts and accessories have earned a reputation for innovation, quality and
28 performance and have won numerous awards in the industry in the United States

1 and around the world.

2 20. Plaintiffs have spent substantial time, money and effort in developing
3 consumer recognition and awareness of their marks and products. BMW NA
4 spends tens of millions of dollars every year in the United States to extensively
5 advertise, market, and promote products and services offered under the BMW and
6 BMW M Marks through a variety of media, including television and print
7 advertisements, the Internet, and high-profile sponsorships.

8 21. As a result of Plaintiffs' efforts, the quality of Plaintiffs' products, the
9 high degree of promotion and the quality and popularity of the Plaintiffs' products,
10 the BMW Marks have been prominently placed in the minds of the public.
11 Consumers, purchasers and the members of the public have become familiar with
12 Plaintiffs' intellectual property and products, and have come to recognize the BMW
13 and BMW M Marks, and products and associate them exclusively with Plaintiffs.
14 Plaintiffs have acquired a valuable reputation and goodwill among the public as a
15 result of such association. Indeed, Plaintiffs' BMW and BMW M Marks are
16 famous in the United States and around the world.

17 22. In use in the United States since 1955, the BMW Marks, in particular,
18 enjoy unquestionable fame as a result of long use, extensive advertising, massive
19 commercial success, substantial publicity, and favorable public acceptance and
20 recognition. Indeed, the BMW Marks have become among the most recognized
21 brands in the world, and have consistently been ranked in many top-100 lists for
22 years, including No. 22 in "100-top Most Powerful Brands" by Tenet Partners in
23 2017, No. 20 in "The World's Most Valuable Brands" by Forbes in 2018, and No.
24 13 in "Best Global Brands" by Interbrand in 2018, among many others.

25 23. Furthermore, federal district courts have recognized that the BMW
26 Marks are famous. *See BMW of N. Am., LLC v. Eurotech Wheels, LLC*, No. 08 CV
27 0171 JM (WMC), 2008 WL 11337018, at *1 (S.D. Cal. July 25, 2008) (finding that
28 the BMW Word Mark and BMW Logo are both famous); *BMW of N. Am., LLC v.*

1 *Quality Star Benz LLC*, No. 2:12-CV-00889-GMN, 2013 WL 1338233, at *1 (D.
2 Nev. Mar. 29, 2013) (“BMW NA has expended millions of dollars in advertising
3 across the United States in connection with its Marks [including the BMW Logo]
4 making them famous.”).

BMW AG's Registered Trademarks

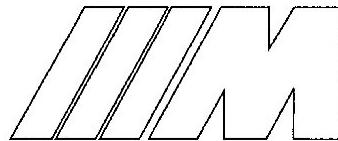
6 24. Although Plaintiffs have gained significant common law trademark
7 rights based on their use in commerce of the BMW and BMW M Marks,
8 advertising and promotion, Plaintiffs have also protected their valuable rights by
9 filing for and obtaining numerous federal trademark registrations.

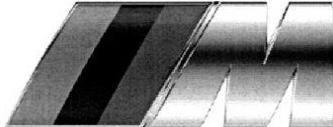
10 25. Plaintiff BMW AG is the exclusive owner of numerous federally
11 registered and common law trademarks.

12 26. Plaintiff BMW AG owns United States Patent and Trademark Office
13 ("U.S.P.T.O.") certificates of registrations for the following BMW and BMW M
14 Marks relevant to this action (collectively the "BMW Trademarks").

Mark	Reg. No. Reg. Date	Goods and Services (Summary)
BMW	0611710 9-6-1955	Automobiles in class 12.
BMW	5333863 11-14-2017	Land vehicles and various parts and accessories for land vehicles, including structural parts, side grills being vehicle trim, badges, wheels, hubcaps, valve stem caps, exterior and interior insignia badges for vehicles and vehicle parts, namely, insignia for vehicles and other goods in class 12.
	613465 10-4-1955	Automobiles and parts thereof in class 12.

Mark	Reg. No. Reg. Date	Goods and Services (Summary)
	1450212 8-4-1987	Land vehicles and parts therefor not included in other classes; brakes; wheels; rims for vehicle wheels; as well as various other goods in class 12; (Various other goods and services in Classes 1, 2, 3, 4, 5, 6, 8, 9, 11, 14, 16, 18, 20, 21, 24, 25, 26, 28, 34, 35, 36, 37, 39, and 41.)
	5333865 11-14-2017	Land vehicles and parts thereof, including brakes and braking systems, brake discs, brake segments, brake blocks, brake pads, wheels, rims for vehicle wheels, hubcaps, hubs for vehicle wheels, exterior and interior insignia badges for vehicles and vehicle parts, namely, insignia for vehicles in class 12.
	5333900 11-14-2017	Land vehicles and various parts and accessories for land vehicles, including structural parts, brakes and braking systems, brake discs, brake segments, brake blocks, brake pads, side grills being vehicle trim, badges, wheels, hubcaps, valve stem caps, exterior and interior insignia badges for vehicles and vehicle parts, namely, insignia for vehicles and other goods in class 12.
	6604537 1-4-2022	Land vehicles and various parts and fittings for land vehicles, including structural parts, brakes and braking systems, brake discs, brake segments, brake blocks, brake pads, side grills being vehicle trim, wheels, hubcaps, valve stem caps, exterior and interior insignia badges for vehicles and

Mark	Reg. No. Reg. Date	Goods and Services (Summary)
		vehicle parts, namely, insignia for vehicles and other goods in class 12. (Various other goods and services in Classes 9, 12, 14, 16, 18, 21, 25, 28, 34, 35, 36, 37, 38, 39, and 42.)
	6829651 8-30-2022	Land vehicles and various parts and fittings for land vehicles, including structural parts, brakes and braking systems, brake discs, brake segments, brake blocks, brake pads, side grills being vehicle trim, wheels, hubcaps, valve stem caps, exterior and interior insignia badges for vehicles and vehicle parts, namely, insignia for vehicles and other goods in class 12. (Various other goods and services in Classes 9, 12, 14, 16, 18, 21, 25, 28, 34, 35, 36, 37, 38, 39, and 42.)
BMW M	4541350 6-3-2014	Automobiles and their parts, namely, structural parts, wheels, steering wheels, door sills, gear shift knobs, headrests, seats, tire valve stem caps, license plate frames, badges for motor vehicles being trim; automotive body kits comprising external structural parts of automobiles; engines for land motor vehicles in class 12.
	3526899 4-11-2008	Automobiles and their structural parts; parts of automobiles, namely, engines, wheels, steering wheels, door sills, gear shift knobs, headrests, seats, tire valve stem caps, license plate frames, car badges; automotive body kits comprising external structural parts of automobiles in class 12.

Mark	Reg. No. Reg. Date	Goods and Services (Summary)
	3767663 3-30-2010	Automobiles and their structural parts; parts of automobiles, namely, gear shift knobs in class 12.
	5522663 7-24-2018	Automobiles and their structural parts; parts of automobiles, namely, door sills being strips of metal affixed to the automobile sill, gear shift knobs, car badges, namely, vehicle identification badges and automobile hood ornaments and other goods in class 12.
	6025777 3-31-2020	Land vehicles; parts and fittings for land vehicles, namely, structural parts for land vehicles, brakes and braking systems, brake discs, brake segments, brake blocks, brake pads, badges, exterior and interior insignia badges for vehicles and vehicle parts, namely, insignia for vehicles and other goods in class 12.
	6641554 2-15-2022	Land vehicles; parts and fittings for land vehicles, namely, structural parts for land vehicles, brakes and braking systems, brake discs, brake segments, brake blocks, brake pads, badges, exterior and interior insignia badges for vehicles and vehicle parts, namely, insignia for vehicles and other goods in class 12.
	6655742 1-3-2022	Land vehicles; parts and fittings for land vehicles, namely, structural parts for land vehicles, brakes and braking systems, brake discs, brake segments, brake blocks, brake pads, badges, exterior and interior insignia badges for vehicles and vehicle

Mark	Reg. No. Reg. Date	Goods and Services (Summary)
		parts, namely, insignia for vehicles and other goods in class 12.
X7	4745821 6-2-2015	Automobiles and light trucks; parts of the aforesaid goods, namely, structural parts, wheels, engines, vehicle seats, gearshift lever, brakes and braking systems, gears, fenders.
X6	3335405 11-13-2007	Automobiles and structural parts therefor, except tires and inner tubes for tires in class 12.
X5	2484353 9-4-2001	Passenger motor vehicles and structural parts therefor in class 12.
X5 M	3635625 6-9-2009	Automobiles, sports-utility vehicles.
X4	4159738 6-19-2012	Automobiles.
X3	2867087 7-27-2004	Passenger motor vehicles and structural parts therefor in class 12.
X2	4130382 4-24-2012	Automobiles.
X1	3256739 6-26-2007	Automobiles and structural parts therefor, except tires and inner tubes for tires.
M5	2381292 8-29-2000	Passenger motor vehicles and structural parts therefore.

Mark	Reg. No. Reg. Date	Goods and Services (Summary)
M4	5425915 3-20-2018	Automobiles.
M3	2535373 2-5-2002	Passenger motor vehicles and structural parts therefore.
M2	3988515 7-5-2011	Automobiles and structural parts therefor.
M8	5169067 3-28-2017	Automobiles and structural parts therefor.
330	4998766 7-12-2016	Automobiles and structural parts therefor.
328	2584405 6-25-2002	Automobiles and structural parts therefor.
230	5286685 9-12-2017	Automobiles and structural parts therefor.
M550	1099345 10-14-2011	Automobiles and structural parts therefor.

27. The federal trademark registrations listed above are prima facie evidence of BMW's ownership and the validity of those registered trademarks. Further, many of these registrations are incontestable, and thus constitute conclusive evidence of BMW's exclusive right to use those marks for the products and/or services specified in those registrations pursuant to 15 U.S.C. §§1065 and 1115(b).

28. Plaintiff BMW AG owns the BMW Trademarks.

29. Plaintiff BMW AG has authorized and consented to Plaintiff BMW NA's use of the BMW Trademarks in the United States.

30. Plaintiffs have never authorized or consented to Defendants' use of the BMW Trademarks in commerce, or any confusingly similar marks by Defendants.

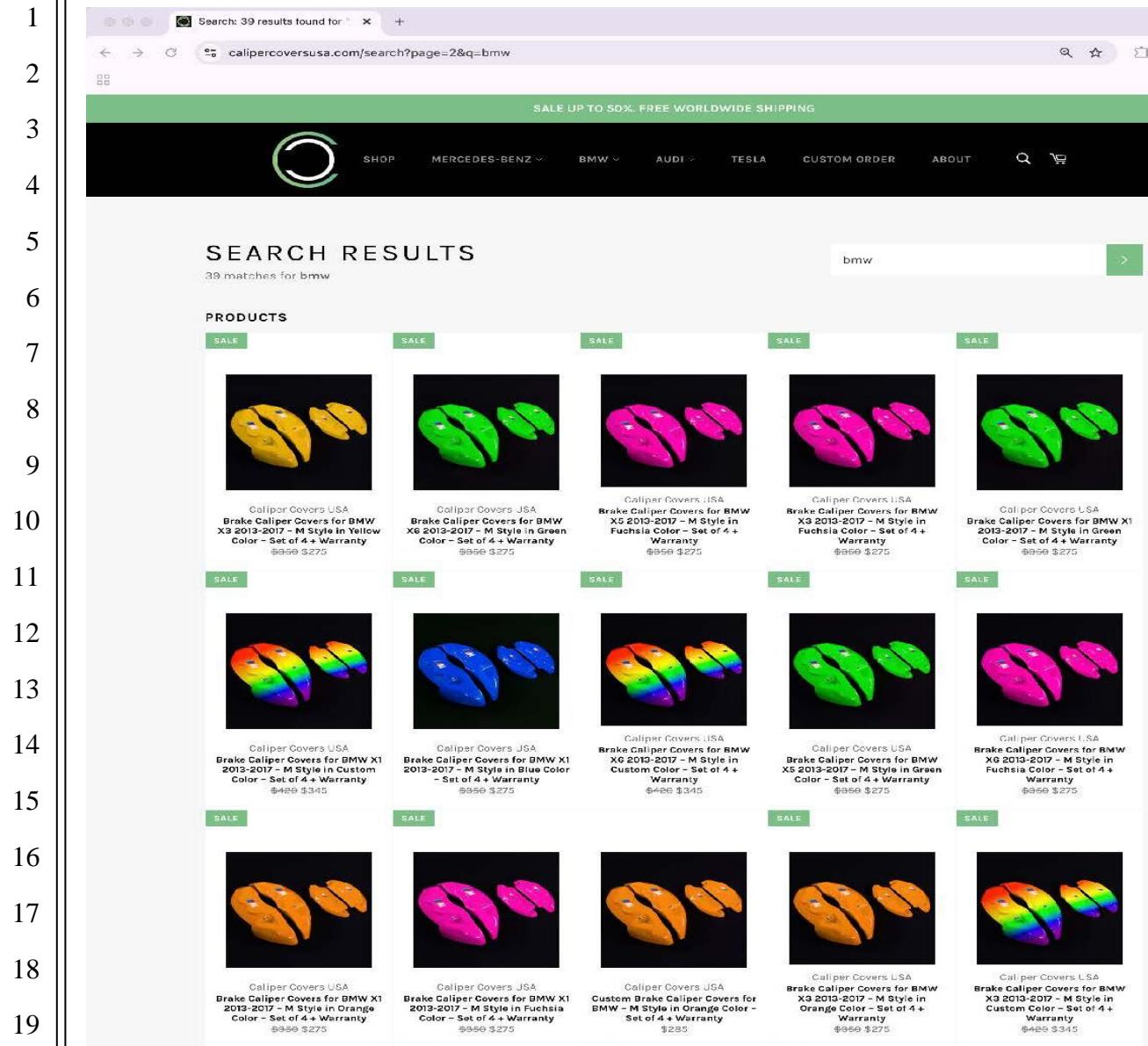
Defendants' Infringing Conduct

31. Beginning on a date that is unknown to Plaintiffs and continuing to the present, Plaintiffs are informed and believe, and on that basis allege, that Defendants have, without the consent of Plaintiffs, imported, offered for sale, sold and distributed infringing replica BMW and BMW M automobile parts and accessories, including but not limited to automobile emblems and brake caliper covers to consumers that were publicly displayed and sold using the BMW Trademarks in advertising, that bear counterfeit BMW Trademarks, and that were not manufactured by Plaintiffs or any manufacturer authorized by Plaintiffs.

32. Plaintiffs are informed and believe, and on that basis allege, that Defendants, operating under the fictitious business names BUY TUNING and CALIPER COVERS USA and their associated business websites at buytuning.com and calipercoversusa.com, offer for sale replica BMW and BMW M automobile parts and accessories to consumers using BMW Trademarks in advertising and sell and distribute replica BMW and BMW M logo automobile emblems and brake caliper covers – among other things – to consumers that bear counterfeit BMW Trademarks.

33. Plaintiffs are informed and believe, and on that basis allege, that Defendants offer automobile brake caliper covers for sale to consumers online through the calipercoversusa.com website. The brake caliper covers offered for sale bear counterfeit BMW M trademarks¹ as depicted in the screenshot below:

¹ In addition to BMW, Defendants offer brake caliper covers through this website that bear trademarks owned by other automotive brands including Mercedes-Benz, Audi, and Tesla.



34. Plaintiffs are informed and believe, and on that basis allege, that Defendants also use online accounts registered with third-parties, including but not limited to an account registered with Mercari, Inc., to offer for sale replica BMW and BMW M automobile parts and accessories to consumers online using BMW Trademarks in advertising and to sell and distribute replica BMW and BMW M logo automobile emblems and brake caliper covers – among other things – to consumers that bear counterfeit BMW Trademarks.

35. Plaintiffs are informed and believe, and on that basis allege, that Defendants operate on Mercari.com under the seller ID “*BuyTuning*.”

36. Plaintiffs are informed and believe, and on that basis allege, that the automobile emblems and brake caliper covers offered for sale to consumers by Defendants through Mercari.com, under the seller ID “BuyTuning,” bear numerous registered trademarks owned by BMW AG, as depicted in the screenshot below:

1 37. On April 23, 2024, in their ongoing investigation of infringing uses of
2 BMW Trademarks and online advertisements and sales of products bearing
3 counterfeit BMW Trademarks, Plaintiffs' investigator purchased what was
4 advertised for sale online as a "BMW X5 Series Gloss Black Emblem X5M
5 Number Letters Rear Trunk Badge" by Mercari.com seller ID "*BuyTuning*" for a
6 total purchase price of \$25.09 USD sent from a PayPal electronic account. A true
7 and correct screenshot of Defendants Mercari item listing for the rear trunk badge
8 purchased is attached hereto as **Exhibit A**.

9 38. On or around May 2, 2024, Plaintiffs' investigator received a rear
10 trunk badge, pursuant to the April 23, 2024 order from Mercari seller ID
11 "*BuyTuning*," with a shipping package and label identifying the following return
12 address:

13 BUY TUNING
14 BUY TUNING
15 1824 FAIRBURN AVE
16 LOS ANGELES CA 90025-4966

17 39. The BMW M X5 automobile emblem sold by Defendants was
18 inspected by BMW to determine authenticity and was determined to be counterfeit.

19 40. On June 27, 2024, Plaintiffs sent a cease-and-desist demand notice to
20 Defendants via e-mail and Certified U.S. Mail at the package return address. The
21 cease-and-desist letter was sent via e-mail to support@buytuning.com and
22 info@calipercoversusa.com. The certified letter was received back marked
23 "RETURN TO SENDER" and "NOT DELIVERABLE AS ADDRESSED
24 UNABLE TO FORWARD."

25 41. Plaintiffs are informed and believe, and on that basis allege, that
26 through such business activities, Defendants have purposefully derived benefit
27 from their interstate commerce activities by expressly targeting foreseeable
28 purchasers in the State of California and throughout the United States.

1 42. Plaintiffs are informed and believe, and on that basis allege, that
2 Defendants violated and continue to violate Plaintiffs' exclusive rights to the BMW
3 Trademarks and use images and marks that are identical to and/or confusing similar
4 to the BMW Trademarks to confuse consumers and aid in the promotion and sale
5 of infringing replica BMW and BMW M parts and accessories.

6 43. Plaintiffs are informed and believe, and on that basis allege, that
7 Defendants' infringing uses of BMW Trademarks in commerce began long after
8 Plaintiffs' adoption and use of the BMW Trademarks, after Plaintiffs obtained the
9 trademark registrations alleged above, and after the BMW Trademarks became
10 famous. Neither Plaintiffs nor any of Plaintiffs' authorized agents have consented
11 to Defendants' use of Plaintiffs' BMW Trademarks.

12 44. Plaintiffs are informed and believe, and on that basis allege, that
13 despite prior notice of infringement from Plaintiffs, Defendants continued to
14 violate Plaintiffs' exclusive rights in and to the BMW Trademarks on
15 buytuning.com, calipercoversusa.com, and Mercari.com.

16 45. Plaintiffs are informed and believe, and on that basis allege, that
17 Defendants' actions were committed intentionally, in bad faith and with the intent
18 to dilute Plaintiffs' marks, and to cause confusion and mistake, and to deceive the
19 consuming public and the public at large as to the source, sponsorship and/or
20 affiliation of Defendants. Through their wrongful conduct, Defendants have
21 directly traded upon and diminished Plaintiffs' goodwill.

22 46. In committing these acts, all of which have and will continue to cause
23 irreparable harm to Plaintiffs, Plaintiffs are informed and believe, and on that basis
24 allege, that Defendants have, among other things, willfully and in bad faith: (i)
25 infringed, tarnished, diluted Plaintiffs' rights in the BMW Trademarks; (ii) used
26 counterfeit BMW Trademarks; (iii) misled the public into believing there is an
27 association or connection between Defendants and Plaintiffs and/or the products
28 advertised and sold by Defendants and Plaintiffs; (iv) misled the public into

1 believing that Plaintiffs endorse Defendants products; (v) used false designations
 2 of origin on or in connection with its goods and services; and (vi) profited unfairly
 3 from such activity. Unless enjoined, Defendants will continue to cause irreparable
 4 harm to Plaintiffs.

5 **FIRST CAUSE OF ACTION**

6 **(Infringement of Registered Trademarks & Counterfeiting by Defendants**

7 **MARIIA SYROTIUK, IURII GREBENIUK, and DOES 1 through 10,
 8 Inclusive)**

9 **[15 U.S.C. § 1114/*Lanham Act* § 32(a)]**

10 47. Plaintiffs hereby incorporate by reference each of the allegations set
 11 forth in paragraphs 15 - 46 in this Complaint as though fully set forth in this cause
 12 of action.

13 48. Plaintiffs have continuously used the BMW Trademarks in interstate
 14 commerce.

15 49. Plaintiff BMW AG, as the exclusive owner of all right, title and
 16 interest in and to the BMW Trademarks, and Plaintiff BMW NA as an authorized
 17 licensee to use the BMW Trademarks in the United States with consent from
 18 Plaintiff BMW AG, have standing to maintain an action for trademark infringement
 19 under 15 U.S.C. §1114.

20 50. Defendants did not and failed to obtain the consent or authorization of
 21 Plaintiffs as the registered owners of the BMW Trademarks to use BMW
 22 Trademarks in commercial advertising and/or to deal in and commercially import,
 23 sell and/or distribute products bearing the BMW Trademarks in commerce.

24 51. Plaintiffs are informed and believe, and on that basis allege, that
 25 Defendants are and at the time of their actions complained of herein were actually
 26 aware that Plaintiffs are the registered trademark holders of the BMW Trademarks.

27 52. Plaintiffs are informed and believe, and on that basis allege, that
 28 Defendants intentionally and knowingly used in commerce reproductions,

1 counterfeits, copies and/or colorable imitations of Plaintiffs' BMW Trademarks to
2 offer for sale, sell and distribute counterfeit goods bearing BMW Trademarks to
3 consumers online.

4 53. Plaintiffs are informed and believe, and on that basis allege, that
5 Defendants imported, transported, offered for sale, sold and distributed counterfeit
6 goods bearing Plaintiffs' BMW Trademarks in commerce in connection with the
7 sale, offering for sale, distribution, and/or advertising of counterfeit goods bearing
8 Plaintiffs' BMW Trademarks.

9 54. Plaintiffs are informed and believe, and on that basis allege, that
10 Defendants' egregious and intentional importation, sale and/or distribution of
11 counterfeit goods bearing Plaintiffs' BMW Trademarks is likely to cause
12 confusion, or to cause mistake, or to deceive, mislead, betray, and defraud
13 consumers who believe that Defendants' items are authentic products
14 manufactured by Plaintiffs and/or authorized manufacturers.

15 55. Plaintiffs are informed and believe, and on that basis allege, that
16 Defendants' acts have been committed with knowledge of Plaintiffs' exclusive
17 rights and goodwill in the BMW Trademarks, as well as with bad faith and the
18 intent to cause confusion or to cause mistake and to deceive.

19 56. Plaintiffs are informed and believe, and on that basis allege, that
20 Plaintiffs have suffered and will continue to suffer substantial and irreparable
21 injury, loss and damage to their rights in and to the BMW Trademarks and the
22 goodwill associated therewith, for which it has no adequate remedy at law; thus,
23 Plaintiffs request injunctive relief.

24 57. Plaintiffs are informed and believe, and on that basis allege, that
25 Defendants continued knowing and willful importation, sale and distribution of
26 goods bearing Plaintiffs' BMW Trademarks without Plaintiffs' consent or
27 authorization constitutes intentional infringement of Plaintiffs' federally registered
28 trademarks in violation of Section 32 of the *Lanham Act*, 15 U.S.C. § 1114. Based

1 on such conduct, Plaintiffs are entitled to injunctive relief as well as monetary
 2 damages, and other remedies provided by section 1116, 1117, and 1118, including
 3 Defendants' profits, treble damages, reasonable attorneys' fees, costs, statutory
 4 damages and/or prejudgment interest.

5 **SECOND CAUSE OF ACTION**

6 **(False Designation of Origin & Unfair Competition against Defendants**
 7 **MARIIA SYROTIUK, IURII GREBENIUK, and DOES 1 through 10,**
 8 **Inclusive)**

9 **[15 U.S.C. § 1125(a)/*Lanham Act* § 43(a)]**

10 58. Plaintiffs hereby incorporate by reference each of the allegations set
 11 forth in paragraphs 15 - 46 in this Complaint as though fully set forth in this cause
 12 of action.

13 59. Plaintiffs, as the owners of all common law right, title, and interest in
 14 and to the BMW Trademarks, have standing to maintain an action for false
 15 designation of origin and unfair competition under Section 43(a) of the *Lanham*
 16 *Act* (15 U.S.C. § 1125).

17 60. Plaintiffs' BMW Trademarks are inherently distinctive and/or have
 18 otherwise acquired distinctiveness.

19 61. Plaintiffs are informed and believe, and on that basis allege, that
 20 Defendants have without authorization, on or in connection with its goods and
 21 services, used in commerce marks that are confusingly similar to the asserted
 22 marks, and/or have made false designations of origin which are likely to cause
 23 confusion or cause mistake or to deceive as to the affiliation, connection or
 24 association of Defendants with Plaintiffs, and/or as to the origin, sponsorship or
 25 approval of Defendants' goods or services or commercial activities.

26 62. Plaintiffs are informed and believe, and on that basis allege, that
 27 Defendants' conduct described above violates the *Lanham Act*, and Defendants
 28 have unfairly competed with and injured and, unless immediately restrained, will

1 continue to injure Plaintiffs, causing damage to Plaintiffs in an amount to be
2 determined at trial, and will cause irreparable injury to Plaintiffs' goodwill and
3 reputation associated with the value of Plaintiffs' marks.

4 63. Plaintiffs are informed and believe, and on that basis allege, that the
5 conduct of Defendants has been knowing, deliberate, willful, intended to cause
6 confusion, or to cause mistake or to deceive and in blatant disregard of Plaintiffs'
7 rights.

8 64. Plaintiffs are informed and believe, and on that basis allege, that
9 Defendants knew, or by the exercise of reasonable care should have known, that
10 their adoption and commencement of use in commerce and continuing use of marks
11 that are confusingly similar to and constitute a counterfeit reproduction of
12 Plaintiffs' BMW Trademarks would cause confusion, mistake, or deception among
13 purchasers, users and the public.

14 65. Plaintiffs are informed and believe, and on that basis allege, that
15 Defendants' egregious and intentional use, sale and distribution of fake, pirated and
16 counterfeit automobile products bearing Plaintiffs' BMW Trademarks unfairly
17 competes with Plaintiffs and is likely to cause confusion, mistake, or to deceive,
18 mislead, betray, and defraud consumers to believe that the substandard imitations
19 are genuine BMW and BMW M products.

20 66. Plaintiffs are informed and believe, and on that basis allege, that
21 Defendants' continuing and knowing use of BMW Trademarks constitutes false
22 designation of origin and unfair competition in violation of Section 43(a) of the
23 *Lanham Act* (15 U.S.C. § 1125(a)), causing Plaintiffs to suffer substantial and
24 irreparable injury for which it has no adequate remedy at law.

25 67. Plaintiffs are informed and believe, and on that basis allege, that
26 Defendants' wrongful conduct has permitted or will permit it to make substantial
27 profits on the strength of Plaintiffs' marketing, advertising, sales and consumer
28 recognition. As a direct and proximate result of Defendants' wrongful conduct, as

alleged herein, Plaintiffs have been and will be deprived of sales of genuine BMW and BMW M products in an amount as yet unknown but to be determined at trial, and have been deprived and will be deprived of the value of their marks as commercial assets in an amount as yet unknown but to be determined at trial. Plaintiffs seek damages and an accounting of Defendants' profits, and requests that the Court grant Plaintiffs three times that amount in the Court's discretion.

7 68. Plaintiffs are informed and believe, and on that basis allege, that based
8 on Defendants' wrongful conduct, Plaintiffs are entitled to injunctive relief as well
9 as monetary damages, and other remedies as provided by the *Lanham Act*,
10 including Defendants' profits, treble damages, reasonable attorneys' fees, costs and
11 prejudgment interest.

THIRD CAUSE OF ACTION

(Trademark Dilution against Defendants MARIIA SYROTIUK, IURII GREBENIUK, and DOES 1 through 10, Inclusive)

[15 U.S.C. § 1125(c)]

16 69. Plaintiffs hereby incorporate by reference each of the allegations set
17 forth in paragraphs 15 - 46 in this Complaint as though fully set forth in this cause
18 of action.

19 70. Plaintiffs' BMW Trademarks are distinctive, and the BMW and BMW
20 M Marks are famous within the meaning of the *Lanham Act*.

21 71. Plaintiffs are informed and believe, and on that basis allege, that
22 Defendants' unlawful actions began long after Plaintiffs' BMW Trademarks
23 became famous, and Defendants acted knowingly, deliberately and willfully with
24 the intent to trade on Plaintiffs' reputation and to dilute Plaintiffs' BMW
25 Trademarks. Defendants' conduct is willful, wanton and egregious.

26 72. Plaintiffs are informed and believe, and on that basis allege, that
27 Defendants' intentional use of BMW Trademarks on eBay.com and importation,
28 transportation, sale and/or distribution of fake, pirated, and counterfeit automobile

1 products bearing Plaintiffs' BMW Trademarks is likely to cause confusion,
 2 mistake, or to deceive, mislead, betray, and defraud consumers to believe that the
 3 substandard imitations are genuine BMW and BMW M products. The actions of
 4 Defendants complained of herein have diluted and will continue to dilute the BMW
 5 Trademarks and other marks, and are likely to impair the distinctiveness, strength
 6 and value of Plaintiffs' BMW Trademarks, and injure the business reputation of
 7 Plaintiffs and their marks.

8 73. Plaintiffs are informed and believe, and on that basis allege, that
 9 Defendants' acts have caused and will continue to cause Plaintiffs irreparable harm.
 10 Plaintiffs have no adequate remedy at law to compensate it fully for the damages
 11 that have been caused and which will continue to be caused by Defendants'
 12 unlawful acts, unless they are enjoined by this Court.

13 74. As the acts alleged herein constitute a willful violation of section 43(c)
 14 of the *Lanham Act*, 15 U.S.C. section 1125(c), Plaintiffs are informed and believe,
 15 and on that basis allege, that they are entitled to injunctive relief as well as monetary
 16 damages and other remedies provided by 15 U.S.C. §§ 1116, 1117, 1118, and
 17 1125(c), including Defendants' profits, actual and statutory damages, treble
 18 damages, reasonable attorney's fees, costs and prejudgment interest.

FOURTH CAUSE OF ACTION

20 **(Unlawful, Unfair, Fraudulent Business Practices against Defendants**
 21 **MARIIA SYROTIUK, IURII GREBENIUK, and DOES 1 through 10,**
 22 **Inclusive)**

23 **[*California Business & Professions Code § 17200 et seq.*]**

24 75. Plaintiffs hereby incorporate by reference each of the allegations set
 25 forth in paragraphs 15 - 46 in this Complaint as though fully set forth in this cause
 26 of action.

27 76. Plaintiffs are informed and believe, and on that basis allege, that by
 28 marketing, advertising, promoting, selling, importing, transporting, distributing,

1 shipping and/or otherwise dealing in counterfeit BMW and BMW M products
2 using the BMW Trademarks on eBay.com, Defendants have engaged in unfair
3 competition including unlawful, unfair, and fraudulent business practices in
4 violation of the *California Business and Professions Code* § 17200 *et seq.*

5 77. Plaintiffs are informed and believe, and on that basis allege, that
6 Defendants' unauthorized use of the BMW Trademarks on eBay.com and
7 importation, transportation, sale, distribution, and other dealings in counterfeit
8 BMW and BMW M products is in violation and derogation of Plaintiffs' rights and
9 is likely to cause confusion, mistake, and deception among consumers and the
10 public as to the source, origin, sponsorship, or quality of the goods of Defendants,
11 thereby causing loss, damage and injury to Plaintiffs and to the purchasing public.
12 Defendants' conduct was intended to cause such loss, damage and injury.

13 78. Plaintiffs are informed and believe, and on that basis allege, that
14 Defendants knew or by the exercise of reasonable care should have known that
15 their unauthorized use of BMW Trademarks on eBay.com and importation,
16 transportation, marketing, advertising, promoting, selling, and distribution of
17 counterfeit BMW and BMW M products would cause confusion mistake or
18 deception among purchasers, users and the public.

19 79. Plaintiffs are informed and believe, and on that basis allege, that by
20 using BMW Trademarks on eBay.com and importing, transporting, marketing,
21 advertising, promoting, selling, distributing, and/or otherwise dealing in products
22 bearing counterfeit versions of Plaintiffs' BMW Trademarks, Defendants intended
23 to, did, and will continue to induce customers to purchase counterfeit products by
24 trading off the extensive goodwill built up by Plaintiffs in the BMW Trademarks.

25 80. Plaintiffs are informed and believe, and on that basis allege, that the
26 conduct of Defendants has been knowing, deliberate, willful, intended to cause
27 confusion, or to cause mistake or to deceive, and in disregard of Plaintiffs' rights.

28 / / /

1 81. Plaintiffs are informed and believe, and on that basis allege, that
2 Defendants' wrongful conduct, as alleged above, has permitted and will permit
3 them to make substantial profits on the strength of Plaintiffs' nationwide marketing,
4 advertising, sales and consumer recognition. As a direct and proximate result of
5 Defendants' wrongful conduct, as alleged herein, Plaintiffs have been and will be
6 deprived of substantial sales of their products in an amount as yet unknown but to
7 be determined at trial, and have been and will be deprived of the value of the BMW
8 Trademarks as commercial assets, in an amount as yet unknown but to be
9 determined at trial. Plaintiffs seek restitution in this matter, including an order
10 granting Defendants' profits stemming from their infringing activity, and their
11 actual and/or compensatory damages.

12 82. Plaintiffs are informed and believe, and on that basis allege, that
13 Plaintiffs have no adequate remedy at law for Defendants' continuing violation of
14 its rights set forth above. Plaintiffs seek injunctive relief.

PRAYER FOR RELIEF

16 WHEREFORE, Plaintiffs BMW of North America, LLC and Bayerische
17 Motoren Werke AG pray for judgment against Defendants Mariia Syrotiuk, Iurii
18 Grebeniuk, and Does 1 through 10, inclusive, and each of them, as follows:

19 A. For an award of Defendants' profits and Plaintiffs' damages in an
20 amount to be proven at trial for trademark infringement under 15 U.S.C. §§ 1114(a)
21 and 1117(a);

22 B. For an award of Defendants' profits and Plaintiffs' damages in an
23 amount to be proven at trial for false designation of origin and unfair competition
24 under 15 U.S.C. § 1125(a);

25 C. For treble damages suffered by Plaintiffs as a result of the willful and
26 intentional infringements and acts of counterfeiting engaged in by Defendants,
27 under 15 U.S.C. § 1117(b);

28 | // /

1 D. For up to \$2,000,000.00 per counterfeit mark, per type of goods
2 imported, sold, offered for sale, and/or distributed under 15 U.S.C. § 1117(c);

3 E. For an award of Defendants' profits and Plaintiffs' damages in an
4 amount to be proven at trial for trademark dilution under 15 U.S.C. § 1125(c);

5 F. In the alternative to actual damages and Defendants' profits for the
6 infringement and counterfeiting of Plaintiffs' trademarks pursuant to the *Lanham*
7 *Act*, for statutory damages pursuant to 15 U.S.C. § 1117(c), which election
8 Plaintiffs will make prior to the rendering of final judgment;

9 G. For restitution in an amount to be proven at trial for unfair, fraudulent
10 and illegal business practices under *California Business and Professions Code* §
11 17200;

12 K. For temporary, preliminary and permanent injunctive relief from this
13 Court prohibiting Defendants from engaging or continuing to engage in the
14 unlawful, unfair, or fraudulent business acts or practices described herein,
15 including the advertising and/or dealing in any counterfeit product; the
16 unauthorized use of any mark or other intellectual property right of Plaintiffs,
17 including but not limited to the BMW and BMW M Marks; acts of trademark
18 infringement or dilution; false designation of origin; unfair competition; and any
19 other act in derogation of Plaintiffs' rights;

20 L. For an order from the Court requiring that Defendants provide
21 complete accountings and for equitable relief, including that Defendants disgorge
22 and return or pay their ill-gotten gains obtained from the illegal transactions entered
23 into and or pay restitution, including the amount of monies that should have been
24 paid if Defendants complied with their legal obligations, or as equity requires;

25 M. For an order from the Court that an asset freeze or constructive trust
26 be imposed over all monies and profits in Defendants' possession which rightfully
27 belong to Plaintiffs;

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- 1 N. For destruction of the infringing/counterfeit articles in Defendants'
2 possession under 15 U.S.C. § 1118;
- 3 O. For damages in an amount to be proven at trial for unjust enrichment;
- 4 P. For an award of exemplary or punitive damages in an amount to be
5 determined by the Court;
- 6 Q. For Plaintiffs' reasonable attorney's fees;
- 7 R. For all costs of suit; and
- 8 S. For such other and further relief as the Court may deem just and
9 equitable.

10
11 DATED: November 19, 2024 CRITERION COUNSEL, LAW CORPORATION

12
13 By: /s/ Marcus F. Chaney _____
14 Marcus F. Chaney, Esq.

15 Attorneys for Plaintiffs
16 BMW OF NORTH AMERICA, LLC and
17 BAYERISCHE MOTOREN WERKE AG

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DEMAND FOR JURY TRIAL

Plaintiffs BMW of North America, LLC and Bayerische Motoren Werke AG respectfully demand a trial by jury in this action pursuant Rule 38 of the Federal Rules of Civil Procedure and Local Rule 38-1.

DATED: November 19, 2024 CRITERION COUNSEL, LAW CORPORATION

By: /s/ Marcus F. Chaney
Marcus F. Chaney, Esq.

Attorneys for Plaintiffs
BMW OF NORTH AMERICA, LLC and
BAYERISCHE MOTOREN WERKE AG